

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4154 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

MANIBEN KHEMCHANDDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S NJ MEHTA ASSO. for Petitioner
Ms MANISHA LAVKUMAR, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2
MR RC JANI for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/06/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, a primary teacher has challenged the order passed by the District Primary Education Officer, Mehsana, as confirmed by the Tribunal under the Bombay Primary Education Act, 1947 (hereinafter referred to as "the Act") imposing upon the petitioner penalty of

withholding one increment with future effect and also the order of withholding House Rent Allowance on the ground that the petitioner was not residing at the place where she was discharging her duties and, therefore, the education of the students was suffering.

2. The petitioner was appointed as a Primary Teacher in 1965. The petitioner was initially posted at village Mada Adraj, Taluka Kadi, District Mehsana. The petitioner was thereafter transferred to village Vaghded. The petitioner was served with show cause notice dated 31.13.1988 levelling two charges against the petitioner. The first charge was that the muster roll was found from the cupboard of the petitioner and the second charge was that the petitioner was not residing at village Vaghded, but the petitioner was regularly travelling from village Sander to Vaghded and that on account of her residing at a long distance away from the school the educational work of the school was adversely affected. The petitioner was called upon to show cause why House Rent Allowance paid to the petitioner in the past should not be recovered and why disciplinary action should not be taken against the petitioner. The Disciplinary Authority did not receive any reply to the above notice and ultimately the Disciplinary Authority i.e. respondent No. 4 herein-District Primary Education Officer passed the impugned order dated 1.3.1989 for stopping the payment of House Rent Allowance to the petitioner and also for recovery of the House Rent Allowance paid to the petitioner in the past. By the impugned order, the Disciplinary Authority further directed withholding one increment of the petitioner with future effect on the ground that the petitioner had deliberately misplaced the muster roll of the school.

3. The petitioner preferred appeal against the impugned order before the Tribunal constituted under the Act contending that the petitioner was a senior most teacher next only after the Principal and that, therefore, whenever the Principal was on leave, the muster roll would remain in the petitioner's cupboard as the Principal was locking his office. It was further contended that the reply submitted by the petitioner to the Principal for forwarding the same to the Disciplinary Authority was not forwarded and, therefore, the petitioner did not get an opportunity of being heard. The petitioner also contended that she was residing in a rented house at Vaghded and was paying monthly rent and produced a copy of the receipt. The appellate authority i.e. the Tribunal constituted under the Act dismissed the appeal and confirmed the order withholding one

increment with future effect on the ground that the petitioner was not residing at Vaghodod and was travelling from Sander to Vaghodod which caused adverse effect on the education activities of the school. It is against the aforesaid orders that the present petition is filed.

4. The learned counsel for the petitioner submitted that the petitioner's defence was not forwarded to the authorities and that otherwise the petitioner would have been able to satisfy the authorities that the petitioner was residing in a rented house at village Vaghodod as is clear from the receipt at Annexure "A" to the petition. Secondly, it was contended that the penalty of withholding one increment with future effect amounts to a major penalty, but no proceedings for imposing such major penalty was initiated against the petitioner by the authorities.

5. As far as the first contention is concerned, the Court has perused the notice and a copy of the receipt produced at Annexure "A" to the petition. As per the receipt at Annexure "A", the monthly rent was fixed at Rs.50/- per month and Rs.1200/by way of rent for the period from 16.7.1985 to 30.6.1987 i.e. 24 months was paid by the petitioner to the landlord Ujambhai Motiram Panchal on 15.7.1987. A bare perusal of the said receipt would clearly show that the rent at the rate of Rs.50/per month was paid after 24 months at a time. The receipt cannot, therefore, be taken at its face value. The departmental action appears to have been taken by the authorities pursuant to the complaint of the parents of the students studying in the school. There could be no reason why the parents would make such a false complaint that the petitioner was not residing in village Vaghodod. This coupled with the fact that the receipt produced by the petitioner cannot be relied upon would go to show that the authorities were justified in passing the impugned order for stopping payment of House Rent Allowance to the petitioner and also for recovery of House Rent Allowance paid to the petitioner in the past. The first challenge to the impugned order must, therefore, fail.

6. As far as the second challenge to the impugned order is concerned, the Disciplinary Authority passed the order for withholding one increment with future effect on the ground that the muster roll of the school was found from the cupboard of the petitioner whereas the the appellate authority confirmed the order of penalty of withholding one increment with future effect only on the ground that the petitioner was not residing at Vaghodod

and, therefore, the education was suffering. If the impugned order could be upheld on merits, the Court might not have interfered with the said order, but the difficulty which has come in the way of the respondents is that the penalty of stoppage of increment/s with future effect has been considered by the Apex Court to be a major penalty for imposing which a detailed departmental inquiry is required to be held, as contrasted with the procedure prescribed for imposing minor penalty. In the case of Mohinder Singh vs. State of Punjab, 1995 Suppl. (4) SCC 433 and in the case of Kulwant Singh Gill vs. State of Punjab, 1991 Suppl. (1) SCC 504, the Hon'ble Supreme Court has held that the penalty of stoppage of increment/s with future effect amounts to a major penalty in view of the insidious effect or the resultant consequences of working out the penalty.

7. In view of the above discussion, while confirming the order passed by the authorities stopping payment of House Rent Allowance to the petitioner for not residing at Vaghodad and also the order for recovery of the amount of House Rent Allowance paid to the petitioner in the past, this Court sets aside that part of the impugned order by which the penalty of withholding one increment with future effect has been imposed on the petitioner. The respondents shall, however, be at liberty to hold a fresh inquiry in accordance with law in respect of the misconduct for which the authorities had passed the order for withholding one increment with future effect.

8. The petition is accordingly partly allowed with no order as to costs.

Sd/-

June 28, 1999 (M.S. Shah, J.)

sundar/-